



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF)	Docket No. CWA-08-2004-0008
)	
Mid America Steel, Inc.)	CONSENT AGREEMENT
92 Northern Pacific Avenue)	
Fargo, ND 58108)	
)	
Respondent.)	

AUTHORITY

1._____This Consent Agreement (“Agreement”) is entered into between Complainant United States Environmental Protection Agency Region 8 (“EPA”) and Mid America Steel, Inc., ("Respondent") pursuant to Section 311(b)(6)(B)(i) of the Clean Water Act (“the Act”), 33 U.S.C. § 1321(b)(6)(B)(i), which authorizes the EPA Administrator to issue civil penalties for violations of CWA § 311(j), 33 U.S.C. § 1321(j), as amended by the Oil Pollution Act Amendments of 1990. This authority has been properly delegated to the undersigned EPA officials. Complainant and Respondent (hereafter referred to collectively as “the Parties”), by their undersigned representatives, hereby consent and agree as follows.

FACTUAL AND PROCEDURAL BACKGROUND

2. On November 17, 2003, Complainant issued Respondent an Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) under section 311(b)(6)(B)(i) of the Act, 33 U.S.C. § 1321(b)(6)(B)(i), for alleged violations of section

311(j) of the Act, 33 U.S.C. § 1321(j), and the oil pollution prevention regulations set forth at 40 C.F.R. part 112, at Respondent's structural steel manufacturing facility ("facility") located at 92 Northern Pacific Avenue, Fargo, North Dakota. The Complaint proposed a civil penalty for the alleged violations.

3. Respondent admits the jurisdictional allegations of the Complaint and the Agreement.

4. Respondent neither admits nor denies the specific factual allegations of the Complaint and the Agreement.

5. Respondent waives its right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint or this Agreement.

6. This Agreement contains all terms of the settlement agreed to by the Parties. Upon incorporation into a final order, this Consent applies to and is binding upon Respondent, Respondent's officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph 10 has been paid and the SEP required under paragraph 14 has been fully performed. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Agreement.

7. Respondent is in current compliance with the Act and the implementing regulations set forth at 40 C.F.R. part 112.

8. Pursuant to § 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA determined

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that an appropriate civil penalty to settle this action is in the amount of Two Thousand Six Hundred Seventy Two Dollars (\$2,672) after considering the seriousness of the violations, the economic benefit to the violator, the degree of culpability, any other penalty for the same incident, any prior history, Respondent's efforts to mitigate the effects of a discharge, the economic impact of the penalty on the violator, any other matters as justice may require, and Respondent's agreement to perform a supplemental environmental project described herein.

TERMS OF SETTLEMENT

Civil Penalty

9. Respondent consents to the issuance of the Agreement and, for the purposes of settlement, to the payment of the above-cited civil penalty.

10. Respondent consents and agrees that not more than thirty (30) days after Respondent's receipt of a signed final order in this matter, Respondent shall pay the civil penalty by remitting a corporate, cashier's or certified check, payable to the order of the "Oil Spill Liability Trust Fund,"¹ in the amount of Two Thousand Six Hundred Seventy Two Dollars (\$2,672) to:

Donna Inman
Technical Enforcement Program (8ENF-UFO)
U.S. EPA Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

The check shall reference the Respondent's name and address, and the EPA docket number of this action.

11. Respondent agrees to mail a copy of the check simultaneously to the following:

¹ Pursuant to section 311(s) of the CWA, 33 U.S.C. § 1321(s), any amounts received by the United States for actions under section 311 shall be deposited in the "Oil Spill Liability Trust Fund," established under 26 U.S.C. § 9509 to address discharges and substantial threats of discharges of oil.

Tina Artemis, Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
999 18th Street, Suite 300
Denver, CO 80202-2466

and to:

Amy Swanson, Enforcement Attorney
U.S. EPA Region 8 (8ENF-L)
999 18th Street, Suite 300
Denver, CO 80202-2466

12 Respondent agrees and consents that if it fails to pay the penalty amount on the due date set forth in paragraph 10 above, EPA may demand that Respondent pay the full penalty amount of \$10,680 in cash in full satisfaction of this matter. Alternatively, EPA may demand payment of the entire cash settlement amount of \$2,672, plus interest and a late charge of fifteen dollars (\$15.00) after the first 30-day period and for each subsequent 30-day period, or any portion thereof, that the payment is overdue until payment is made, in addition to demanding compliance with all other terms of this Consent Agreement, including but not limited to, performance of the supplemental environmental project ("SEP") identified in paragraph 14 below.

13. The penalty specified in paragraph 10 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

Supplemental Environmental Projects

14. SEP Description

a. Respondent shall undertake the performance of the Red River revegetation SEP described in the attached SEP Proposal (hereby referenced and incorporated herein as Exhibit A).

b. Respondent shall complete the SEP in accordance with the terms and conditions outlined in the SEP Proposal no later than six (6) months from the date of the final order.

15. The total expenditure for the SEP shall be not less than \$8,008 ("SEP amount"), in accordance with the specifications set forth in the SEP Proposal.

16. Respondent hereby certifies that, as of the date of this Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

17. Any public statement, oral or written, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the CWA."

18. Respondent shall submit a SEP Completion Report to EPA within thirty (30) days following the SEP's completion.

a. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;

- (iii) Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and
 - (iv) Certification that the SEP was fully implemented pursuant to the provisions of this Agreement.
- b. Respondent agrees that failure to submit the SEP Completion Report may be deemed a violation of this Agreement and result in the assessment of stipulated penalties agreed to below.
- c. Respondent shall submit all notices and reports required by this

Agreement by first class mail to:

Donna Inman
U.S. EPA Region 8 (8ENF-UFO)
999 19th Street, Suite 300
Denver, Colorado 80202-2466

Stipulated Penalties

19. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 14 above and/or to the extent that the actual SEP expenditure does not equal or exceed the total SEP expenditure described in paragraph 15 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph (b) immediately below, Respondent agrees to pay the SEP amount, less the EPA-approved amount already expended, and pay a stipulated penalty in the amount of \$1,000 to the U.S. Treasury within

thirty (30) days of written demand by EPA if the SEP is not satisfactorily completed by the SEP deadline of six months from the date of the final order.

b. If the SEP is not completed satisfactorily, but Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

c. If the SEP is satisfactorily completed, but Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

d. If the SEP is satisfactorily completed, and Respondent spent at least 90 percent of the amount of money required to be spent for the projects, Respondent shall pay the remaining balance of the SEP amount but no stipulated penalty.

e. For failure to submit the SEP Completion Report required by paragraph 18 above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the SEP Completion Report was originally due until the date that it is submitted.

20. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

21. Respondent shall pay stipulated penalties within thirty (30) days of receipt of written demand by EPA for such penalties. Method of payment, including applicable interest and/or late fees, shall be in accordance with the provisions of paragraph 10 above.

GENERAL PROVISIONS

22. This Consent Agreement shall contain all terms of the settlement agreed to by the parties.

23. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.

24. Nothing in this Consent Agreement shall be construed as a waiver by EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.

25. Nothing in this Consent Agreement shall relieve the Respondent of the duty to comply with the CWA and its implementing regulations.

26. Respondent's undersigned representative certifies that he is fully authorized to enter into and bind the Respondent to the terms and conditions of this Consent Agreement.

27. The parties agree to bear their own costs and attorneys fees in connection with this matter.

28. The parties agree to forward the executed Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a final consent order.

29. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall constitute a complete and full

settlement of the violations alleged herein.

SO CONSENTED AND AGREED TO:

MID AMERICA STEEL, INC.

Respondent.

Date: **June 26, 2004**

By: **SIGNED**

Donald L. Clark
President & CEO

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Complainant.

Date: **7/2/04**

By: **Michael T. Risner**

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: **7/6/04**

By: **SIGNED**

Elisabeth Evans, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: **7/1/04**

By: **SIGNED**

Amy Swanson, Enforcement Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **MID AMERICA STEEL, INC., DOCKET NO.: CWA-08-2004-0008** was filed with the Regional Hearing Clerk on July 8, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on July 8, 2004, to:

Donald L. Clark, President and CEO
Mid America Steel, Inc.
92 Northern Pacific Avenue
Fargo, ND 58108

Commander
Finance Center (OGR)
U.S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

and hand-carried to:

Honorable Alfred C. Smith
Regional Judicial Officer
U.S. Environmental Protection Agency
999 18th Street, Suite 300 (8RC)
Denver, CO 80202-2466

July 8, 2004

SIGNED

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON JULY 8, 2004.

